

LAND USE COVENANT

RECORDING REQUESTED BY:

County of Sacramento
Economic Development Department
700 H Street, Suite 7650
Sacramento, California 95814

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
10151 Croydon Way, Suite #3
Sacramento, California 95827
Attention: Anthony J. Landis, P.E., Chief
Office of Military Facilities

(Space Above This Line For Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

Re: Parcel on Page 0607, Book 961030, County of Sacramento

This Covenant and Agreement ("Covenant") is made by and between the County of Sacramento (the "Covenantor"), the current Owner of the herein described real property situated near Rancho Cordova in the County of Sacramento, State of California, described in Exhibit "A" and shown on Exhibit "B", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (Department), and the Central Valley Regional Water Quality Control Board (Water Board). Pursuant to California Civil Code section 1471(c), the Department and the Water Board have determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence in the groundwater of hazardous materials as defined in the California Health and Safety Code ("H&SC") section 25260(d). The Covenantor, the Department and the Water Board, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 24.9 acres is more particularly described and depicted in Exhibits "A" and "B". The Property is located in the area now generally bounded by

Lower Placerville Road on the north, Whitehead Street on the west, Mather Boulevard on the South, Bullard Street on the east.

1.02 The Air Force (AF) is cleaning up groundwater contamination that may extend beneath the Property under the supervision and authority of the Department and the United States Environmental Protection Agency (U.S. EPA). The Property is within a portion of the former Mather Air Force Base. Remediation of the groundwater is being performed pursuant to a Record of Decision (ROD) pursuant to 40 Code of Federal Regulations (CFR) Part 300.400 et. seq., with regulatory oversight provided by the Department pursuant to Chapter 6.8 of Division 20 of the HS&C. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including volatile organic compounds may remain in the groundwater in and under portions of the Property, the ROD provided that land-use restrictions, as appropriate, would be required as part of the site remediation. The AF circulated the ROD for public review and comment. The ROD was signed by the Department and US EPA in April 1996. Remediation includes a groundwater extraction, treatment, and monitoring system ("System"). The location of the Groundwater Treatment system and the monitoring wells are shown on the map attached as Exhibit "C". The remedial action is under construction and planned to begin operation in April 1998 pursuant to the Preliminary Engineering Report for Phase I Groundwater Remediation of Main Base/Strategic Air Command Industrial Area Plume, July 1997.

1.03. Contaminated groundwater near the Property is found in several zones. Volatile organic compounds (VOCs) and perchlorate are the main contaminants found in groundwater at Mather AFB. It appears that VOCs may be located in at least two zones near the Property. The first zone is the water table unit and it is about 85 to 95 feet below ground surface (bgs) at the Property. The second unit is a hydrogeologic unit labeled unit "B" and is about 95 to 120 feet bgs at the Property. Contaminants and the concentration ranges in the groundwater monitoring wells nearest the Property include trichloroethane (TCE 0.5 to 18 ug/l), Perchloroethylene (PCE 0.7 to 290 ug/l(ppb)), and carbon tetrachloride (CCl₄ 0.5 to 1.3 ug/l). The approved cleanup standards are the Maximum Contaminant Level (MCL) found in both 40 CFR Part 141 and/or Title 22 California Code of Regulations (CCR) Section 64444 and are 5.0 ug/l for TCE, 5.0 ug/l for PCE, and 0.5 ug/l for CCl₄.

Ammonium perchlorate has been historically used in as an oxidizer in rocket fuel. Perchlorate ion (ClO₄⁻) has been found in three of the four main base drinking water supply wells. These wells draw water from depths between approximately 186 at the shallowest level and 580 feet bgs at the deepest level. The range of contaminant concentration is from 14 to 130 ug/l. The compound was not used at Mather AFB but appears to originate from a site up gradient of the base. The California Department of

Health Services has not set a maximum contaminant level under the Safe Drinking Water Act for this compound, but has issued a provisional action level of 18 ug/l.

A Comprehensive Baseline Risk Assessment was completed in August 1996 by the Air Force under the direction of the Department and US EPA. The Risk Assessment concludes that the contaminated groundwater could present an unacceptable threat to human health and safety if a drinking water well were installed into one of the contaminated hydrogeologic zones and an individual used the water as a source of drinking water.

1.04. The response actions at Mather AFB also include some 87 soil and subsurface soil sites. The contaminants of concern at those sites include metals, pesticides, PCB, dioxins, and volatile organic compounds. None of the identified soil and subsurface soil sites are located on the Property. Most of the sites within 0.25 mile of the Property have either been addressed in the ROD or have been identified as "No Further Action" sites.

Exterior lead-based paint contamination of the soil surrounding the two buildings on the parcel (Facilities 3636 and 2655) is of minimal concern. This is due to the age of the buildings (built in 1967 and 1970), the type of construction (stone, metal, stucco) and the relatively small amount of bare soil surrounding the buildings. A deed restriction protecting human health and the environment is not necessary for soils. Notification per Title X of Public Law 102-550 is required for the lead-based paint on the surface of the buildings.

ARTICLE II DEFINITIONS

2.01. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.02. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs

with the land pursuant to Civil Code section 1471; (b) inures to the benefit of the Department and the Water Board and passes with each and every portion of the Property, c) is for the benefit of, and is enforceable by, the Department and the Water Board, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Civil Code Section 1471, this Covenant binds all Owners and Occupants of the Property, and their agents, employees, and lessees. Pursuant to Civil Code section 1471(b), all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department and the Water Board.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department and the Water Board not later than thirty (30) days before executing any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and the Water Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as otherwise provided by law.

ARTICLE IV RESTRICTIONS, NOTICE, ACCESS

4.01. Prohibited Activities. In order to protect human health and the environment, the following activities shall not be conducted at the Property without the prior review and written approval of the AF, the US EPA, the Department and the Water Board:

- (a) The Owner or Occupant of the Property shall not construct or permit to be constructed any well, and shall not extract, utilize, consume or permit to be extracted, any groundwater within the boundary of the property, and
- (b) The Owner or Occupant shall not conduct any alteration or excavation on the Property that is deeper than twenty (20) feet below ground surface (bgs), and

- (c) The Owner or Occupant shall not engage in any other activity on the Property that would interfere with or adversely affect the System on the Property or result in the creation of a groundwater recharge area (e.g., unlined surface impoundments or disposal trenches, not to include routine irrigation practices).

4.02. Limitation.

Covenantor, the Department and the Water Board further agree that this covenant shall not apply to nor restrict any alteration or excavation by the Owner or Occupant within twenty (20) feet bgs, and the Owner may perform any such alteration or excavation within twenty feet bgs without any prior approval being required so long as such alteration or excavation does not interfere with, or adversely affect the System on the Property or result in the creation of a groundwater recharge area.

4.03. Prior Approval, Notification of Disturbances.

- (a) With regard to the request of the Owner or Occupant for prior approval of the Department, the Water Board, AF and US EPA, the request shall be deemed approved by each of the governmental entities or agencies if no denial is received by the Owner or Occupant within thirty (30) days of receipt of the request by the entity or agency. All requests for prior approval, and approvals and denials thereof, shall be served pursuant to section 7.04. If an agency denies a request for approval, with or without prejudice, it shall state the basis for the denial.
- (b) The Owner or Occupant shall notify the Department, the Water Board, AF and US EPA of each of the following events: (i) the type, cause, location and date of any disturbance caused by the Owner or Occupant to the System that could affect the ability of the System to extract, treat and/or monitor the hazardous wastes or hazardous material under the Property, and (ii) the type and date of any repair of such disturbance as authorized by the AF. Notification to the Department, the Water Board, AF, and US EPA shall be made as provided in section 7.04 within ten (10) working days of both the discovery of any such disturbance caused by the Owner or Occupant and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants. If the Owner or Occupant becomes aware of any such

disturbance, even though not caused by the Owner or Occupant, notice shall be given as provided herein.

4.04. Access. The Department and the Water Board shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department and the Water Board in order to protect the public health and safety.

4.05. Access for Implementing Operations and Maintenance of the System. The entity or person responsible for implementing the operation and maintenance of the System on the Property shall have reasonable right of entry and access to the Property for the purpose of implementing the operation and maintenance of the System until the Department, the Water Board, the AF, and US EPA determine that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department and /or the Water Board to require that the Owner or Occupant modify or remove any Improvements ("Improvements" herein shall include, but not be limited to, all groundwater wells, surface impoundments, disposal trenches, buildings, roads, driveways, paved parking areas, water wells, and surface impoundments, constructed or placed upon any portion of the Property in violation of the Restrictions.) Violation of this Covenant shall be grounds for the Department and/or the Water Board to file civil or criminal actions as provided by law.

ARTICLE VI TERMINATION

6.01 Termination of Covenant. This Covenant and all of the restrictions provided herein shall terminate upon written determination by the Department and the Water Board that the groundwater in the vicinity of the Property has attained the remedial cleanup standards as required by the Soils and Groundwater Record of Decision. Such termination shall be made as promptly as possible and in such form as to be recorded in the Office of the County Recorder of Sacramento County.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer

of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.02. State of California References. All references to the State of California, the Department, and the Water Board include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Sacramento within ten (10) days of the Covenantor's receipt of a fully executed original and immediately after recordation of the quit-claim deed from the United States Air Force for the Property.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: County of Sacramento, c/o
Paul Hahn, Director
Economic Development Department
700 H Street, Suite 7650
Sacramento, California 95814

To Department: Anthony J. Landis, P.E.
Chief, Northern California Operation
Office of Military Facilities
DTSC
10151 Croydon Way, Suite #3
Sacramento, CA 95827

To Water Board: Gary M. Carlton
Executive Officer
Central Valley Regional Water Quality
Control Board
3443 Routier Road, Suite A
Sacramento, CA 95827-3003

To USEPA: Dan Opalski
Chief, Federal Facilities Cleanup Branch
USEPA Region IX
75 Hawthorne St. (SFD-8-1)
San Francisco, CA 94105-3901

To USAF: Dale Jackson
NCARB
AFBCA, Division D
1700 N.Moore St., Suite 2300
Arlington, VA 22209

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term or provision set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Covenantor"

Date: _____

By: _____

Department

Date: _____

By: _____

Water Board

Date: 4/20/98

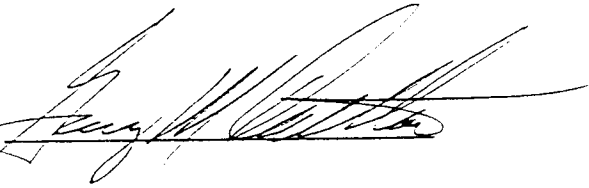
By: 

Exhibit A

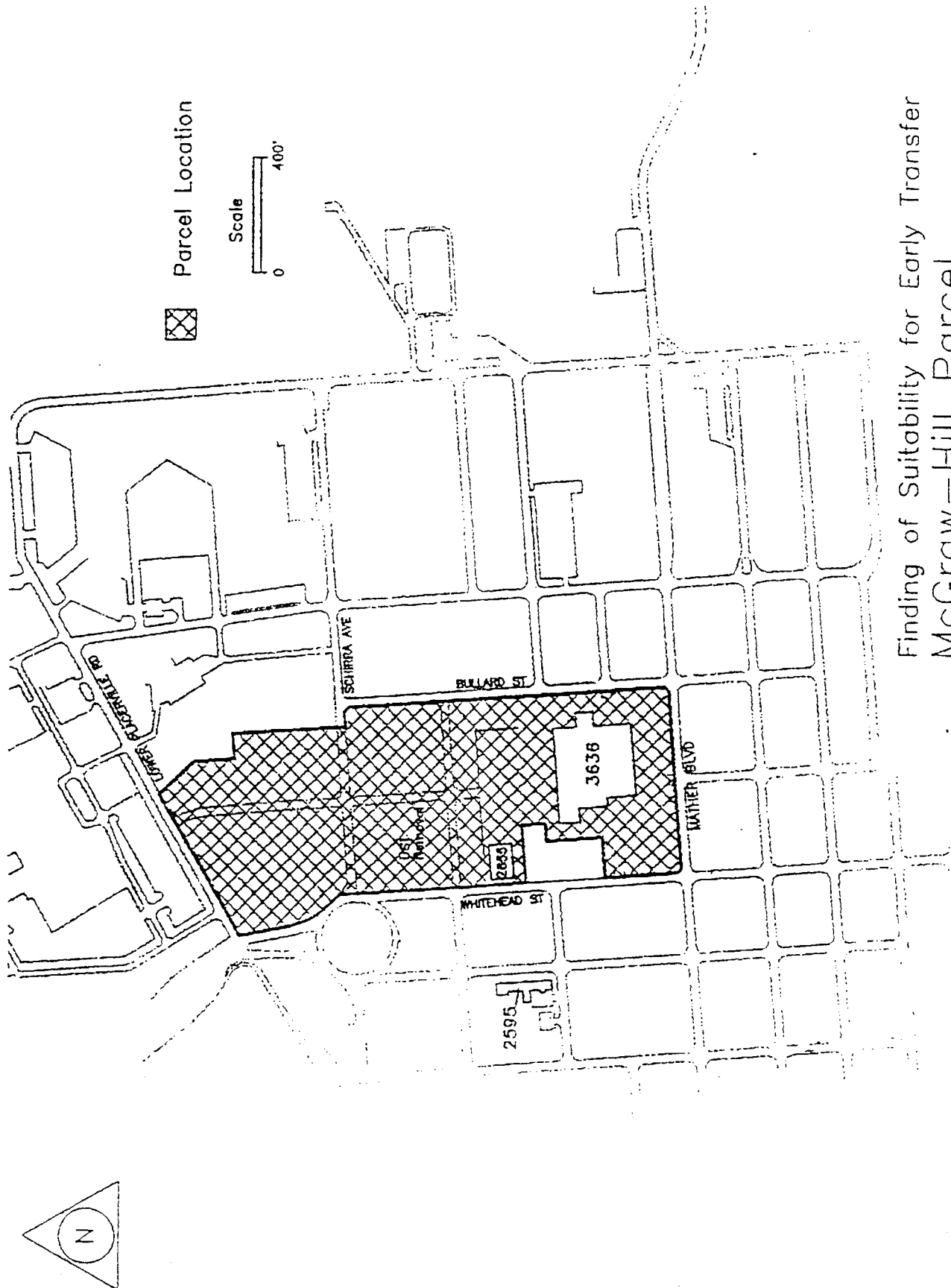
All that real property situated in the County of Sacramento, State of California, described as follows:

All that portion of the "Rancho Rio de Los Americanos" as shown on the Plat of Subdivision thereof surveyed in February, March and April, 1865 by T.J. Arnold, C.E. filed in the office of the Recorder of the County of Sacramento in Book 1 of Maps, Map No. 2 and being a portion of Mather Air Force Base described as follows:

Beginning at the center line intersection of Mather Blvd. and Whitehead St. as shown on the construction plans for the "Mather Field Central Roadway Improvement Project" E.D.A. Grant No. 07-49-04045, Contract No. 3154, on file in the office of the Sacramento County, Public Works Agency, Dept of County Engineering, Transportation Division; thence from said point of beginning along said center line of said Whitehead St. North 04°30'09" West, 279.23 feet; thence leaving said center line of said Whitehead St., North 85°52'53" East, 171.60 feet; thence North 04°30'09" West, 188.70 feet; thence North 85°29'51" East, 62.15 feet; thence North 04°30'09" West, 113.28 feet; thence South 85°29'51" West, 233.75 feet to a point on said center line of said Whitehead St.; thence along said center line of said Whitehead St. the following five courses; 1) North 04°30'09" West, 582.49 feet; 2) along the arc of a curve concave to the southwest having a radius of 140.00 feet and a central angle of 46°28'07" the chord of which bears North 27°44'12" West, 110.46 feet; 3) North 50°58'16" West, 11.08 feet; 4) along the arc of a curve concave to the northeast having a radius of 230.00 feet and a central angle of 46°47'12" the chord of which bears North 27°34'40" West, 182.64 feet; 5) North 04°11'04" West, 20.14 feet; thence continuing along said center line of said Whitehead St. and the northerly prolongation thereof along the arc of a curve concave to the southwest having a radius of 310.00 feet and a central angle of 16°21'58" the chord of which bears North 12°22'03" West, 88.25 feet to a point on the center line of Lower Placerville Road as shown on that Record of Survey entitled "A PORTION OF THE TRACT OF WILLIAM E. BRYAN 2129.33 ACRES OF RANCHO RIO DE LOS AMERICANOS AS SHOWN ON THE PLAT OF SUBDIVISION THEREOF RECORDED IN BOOK 1 OF MAPS, MAP NO. 2 BEING A PORTION OF MATHER AIR FORCE BASE" filed in said Recorder's Office in Book 53 of Surveys at Page 33; thence along said center line of said Lower Placerville Road North 59°11'15" East, 599.62 feet to its intersection with the northwesterly prolongation of the westerly line of that 1.11 acre parcel shown on said Record of Survey filed in Book 53 of Surveys at Page 33; thence along said northwesterly prolongation and said westerly line of said 1.11 acre parcel the following five courses: 1) South 49°07'00" East, 152.98 feet; 2) South 04°51'30" East, 89.68 feet; 3) South 51°30'00" East, 27.75 feet; 4) South 39°00'00" West, 28.30 feet; 5) South 04°51'30" East, 52.96 feet to the southwest corner of said 1.11 acre parcel; thence along the southerly line of said 1.11 acre parcel the following three courses: 1) North 85°00'00" East, 68.51 feet; 2) North 05°00'00" West, 18.00 feet; 3) North 85°00'00" East, 29.17 feet, thence leaving said southerly line of said 1.11 acre

parcel South $03^{\circ}22'33''$ East, 379.02 feet to a point on the center line of Schirra Ave.; thence along said center line of said Schirra Ave. North $85^{\circ}26'59''$ East, 74.52 feet to its intersection with the center line of Bullard St.; thence along the center line of said Bullard St. South $04^{\circ}47'50''$ East, 355.02 feet to its intersection with the center line of Armstrong Ave.; thence continuing along said center line of said Bullard St. South $04^{\circ}30'19''$ East, 807.12 feet to its intersection with said center line of said Mather Blvd.; thence along said center line of said Mather Blvd. South $85^{\circ}30'30''$ West, 677.95 feet to the point of beginning. Containing 24.953 gross acres more or less.

The herein described property being subject to public rights of way and public utility easements as described in the Grant of easement from the United States of America to the County of Sacramento recorded in Book 961030 Official Records at page 0607 in said Recorders Office.



Finding of Suitability for Early Transfer
McGraw-Hill Parcel
Exhibit **B**: Property Map

